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WRITER'S DIRECT DIAL NUMBER

July 8, 1997

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket Nos 91-221, 87-8,
94-150, 92-51, and 87-154

Dear Mr. Caton:

On behalf of Malrite Communicationg Group, Inc., licensee of Station WOIO-TV at Shaker Heights, Ohio, and the broker under a time brokerage agreement with Cannell Cleveland, L.P., licensee of Station WUAB-TV at Lorain, Ohio, there is transmitted herewith an original and four copies of its response to the Commission's June 17, 1997 Public Notice, DA 97-1246.

Should any questions arise with regard to this matter, kindly communicate directly with this office.

Very truly yours,

KAYE, SCHOLER, FIERMAN,
HAYS & HANDLER, LLP

By: 

Bruce A. Eisen

Enclosure

Number of Copies rec'd 024
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LMA REPLY FORM

MARKET: Cleveland, Ohio DMA #: 13

	<u>Channel No. & Call Sign</u>	<u>Network Affiliation</u>	<u>Licensed Community</u>	<u>Owner/ Licensee</u>	<u>Degree of Overlap (%)</u>			<u>Nielsen (all day) Audience Share (9am - midnight) *</u>		
					<u>City</u>	<u>Grade</u>	<u>Grade</u>	<u>11/96</u>	<u>2/97</u>	<u>5/97</u>
					<u>Grade</u>	<u>A</u>	<u>B</u>			
Brokered Station:	Ch. 43 WUAB-TV	UPN	Lorain, OH	Cannell Cleveland, L.P.	100%			9.5	9.9	10.2
Brokering Station:	Ch. 19 WOIO-TV	CBS	Shaker Heights OH	Malrite Communications Group, Inc.				7.2	6.9	9.9

* Household share trend analysis for Cleveland market. WUAB-TV shares increased in May due to the telecast of several Cleveland Indians baseball games.

<u>LMA Specifics:</u>	<u>Date of LMA Signing</u>	<u>Length of Initial Term</u>	<u>Initial Term Start Date</u>	<u>Initial Term End Date</u>	<u>Renewal Provisions/Terms</u> Describe renewal provisions including: (1) length of renewal, (2) at which party's option, (3) whether renewal is automatic, and (4) how renewal option may be exercised.	<u>% Time Brokered per week</u>
	5/3/94	10 yrs	8/18/94	8/18/2004	Broker has option to extend initial term for two additional five year terms upon 90-days notice prior to expiration of term	+90%

Public Interest Benefits: Describe in detail the benefits that have resulted from entering into the LMA (attach separate sheet).

PUBLIC INTEREST BENEFITS

Malrite Communications Group, Inc. ("Malrite"), licensee of Station WOIO-TV at Shaker Heights, Ohio, has a time brokerage agreement with Cannell Cleveland, L.P. ("Cannell"), licensee of Station WUAB-TV at Lorain, Ohio. Both stations operate in the Cleveland, Ohio DMA. WOIO-TV is the broker station under the time brokerage agreement.

The time brokerage agreement has brought a number of significant advantages to the communities of license, the service areas of the two television stations, and to the city of Cleveland, itself. In order to fully understand the benefits that have resulted, some recent history of the market is required.

Malrite has controlled WOIO-TV since 1986. The station had operated as an independent UHF television station in the highly competitive Cleveland-Akron-Canton, Ohio area of dominant influence for approximately 1 1/2 years. WOIO-TV then became a founding affiliate of the Fox Television Network. In May, 1994, Fox/NewsCorp, by acquiring only a 20% interest in the parent corporation of the licensee of Station WJW-TV, was able to control Channel 8 in Cleveland. At that time, WJW-TV was a CBS affiliate and had carried the CBS network for more than forty

years. Through its new ownership, Fox was able to abandon a weaker UHF facility and to associate with a stronger VHF station with far greater market penetration. Although WOIO-TV had a five year contract in force, Fox took advantage of a one-sided clause in its standard affiliation agreement which granted it the right to terminate the contract if it owned or purchased other stations or companies in the market. Fox thereupon canceled WOIO-TV's affiliation effective September 2, 1994.

The sudden and unexpected move severely damaged WOIO-TV in both ratings and revenues. Left without its Fox affiliation, WOIO-TV was compelled to enter into a new affiliation agreement with the CBS television network. This caused significant viewer confusion. WOIO-TV's prime time ratings plummeted, and this was accompanied by a reduction in local station sales inventory in all time periods. The established brand value developed over the course of eight years of marketing and promoting the "Fox 19" franchise was destroyed with the loss of the Fox affiliation. "CBS 19", trying to compete against stronger VHF stations, had no news and little adult programming. When Fox moved to Channel 8, WUAB-TV, which had already experienced a significant decline in revenues, was placed in an even more difficult position. WUAB-TV's programming had been aimed at young adult viewers. Fox,

strengthened by its affiliation with a VHF television facility, began to diminish WUAB-TV's market position even further since WJW-TV now similarly emphasized young adult programming.

Malrite and Cannell foresaw that, although both were disadvantaged UHF television facilities operating in a highly competitive market environment, an appropriate time brokerage agreement implemented with all necessary safeguards to comply with Commission requirements might allow them to move forward as competitive television stations. They negotiated and entered into a time brokerage agreement effective August 18, 1994. The time brokerage payment included a significant amount allocated to the broker's option to extend the initial term of the agreement. Malrite could not have financially extended itself for training and hiring staff, purchasing new equipment, new studio upgrades, and a long-term studio lease if, subsequent to the initial term of the time brokerage agreement, it would have been left with the right to program and to sell advertising for only one station. Although Nielsen data clearly demonstrates that neither station dominates the market (see attachment), absent the time brokerage agreement it is questionable whether the stations could have survived. Certainly, they could not have continued in a manner

that would have enabled them to provide their present levels of news and public affairs offerings.

The WOIO/WUAB experience demonstrates how significantly well constructed LMAs serve the public interest. For one thing, LMAs add jobs to the marketplace. The subject time brokerage agreement has resulted in significant full-time staff gains in news/public affairs (51 additional employees). The largest staff increase has occurred in the full-time news staff, thus revealing the strength of two UHF television stations able to provide greatly enhanced news and public affairs programs. If the efficiencies of LMAs initially reduce some positions, the fact is that the losses are offset by the additional staff in news and local production. Annexed hereto is a "head count analysis" relating to WOIO-TV and WUAB-TV, which reflects a marked increase in full-time employees since the stations entered into the time brokerage agreement.

An example of the combined production resources of WOIO-TV and WUAB-TV has seen the creation of a children's program entitled "Planet Cleveland". It features area children on visits to places of local interest, i.e., museums, businesses, parks, etc. The program seeks to educate first, and entertain second, and its success is entirely due to the strength of the combined

WOIO/WUAB production facilities. The series began in May, 1996 and has aired monthly without fail since. "Planet Cleveland" is extremely expensive to produce, and realizes no profit. The program could not have succeeded in the absence of the time brokerage agreement between the two UHF television stations.

A second positive aspect of the WOIO/WUAB time brokerage agreement results from the combined resources of the news department, program department and production department to produce a number of successful, local specials. Examples of these specials include:

Date	Program	Description
7/4/95	Freedom Festival	Live 4th of July Fireworks Celebration
7/21/95	1995 Grand Prix Parade	Sameday coverage of a major downtown Cleveland parade
8/28- 8/31/95	Rock On Cleveland	Weeklong special previewing the opening of the Rock 'n Roll Hall of Fame & Museum in Cleveland
9/1/95	Rock On Coverage	Live one hour coverage of the opening of the Rock Hall
10/1/95	The Fan-Tastic Tribe	Half hour special highlighting the celebration of Cleveland's first pennant winner in 40 years
10/20/95	Rally on the Square	Half hour live coverage of Cleveland's celebration of their World Series appearance

12/31/95	Fanfare for Cleveland: A Bicentennial	One hour, ten minute special featuring exclusive live coverage of Cleveland's New Year's Eve celebration to kick off their 200th birthday as a city
3/28/96	Romona's Kids Special	Half hour primetime program hosted by anchor Romona Robinson featuring extraordinary stories about Cleveland area children
9/3/96	Building Blocks to Healthier Kids	Half hour special featuring Medical Reporter Dr. Rose Gabrielle focusing on medical issues that involve children
11/4/96	Election Coverage	Both stations geared up with comprehensive, competitive election coverage
11/27/96	In Your Face with Ronnie Duncan	Half hour special with Sports Anchor Ronnie Duncan, featuring one-on-one exclusive interviews with notable local sports personalities
3/29/97	Jazzed Up: The Tri-C (Cleveland Community College) Jazz Festival	Half hour local jazz special hosted by Malrite's Mike Olszewski, and featuring local jazz musicians

Few, if any, of the specials noted above might have been produced absent the WOIO/WUAB time brokerage agreement. A start-up news operation is an extremely difficult and expensive investment for any television broadcaster to make. Indeed, in the Cleveland market, no licensee had launched local news of

equal size and scope until the operations of WOIO-TV and WUAB-TV were combined pursuant to the time brokerage agreement. This allowed Malrite to purchase remote vehicles to cover increased amounts of local, live news and to employ investigative staff reporters. The difference between the newscasts before and after the time brokerage agreement is of great consequence. Prior to the time brokerage agreement, WUAB-TV's once-a-day newscast generally tracked news gathered by other broadcast facilities. That is no longer the case, and the extent of the newscasts now aired on both WOIO-TV and WUAB-TV is substantial. Indeed, given the VHF market competition from national media sources, the quality and breadth of newscasts that are now produced by the two independent UHF facilities is remarkable. This could never have been accomplished in the absence of the economies which are derived from the time brokerage. It is likely that the 10:00 p.m. newscasts aired on WUAB-TV would have ceased production without the relationship. In effect the time brokerage has actually brought a new voice to the market.

The time brokerage agreement has led to other advantages. It has most certainly added to the revitalization of downtown Cleveland. Before the time brokerage agreement was implemented, WUAB-TV and WOIO-TV were headquartered at suburban locations

which no longer exist, and each licensee operated with modestly equipped or inadequate facilities. As a result of the time brokerage agreement, the stations were able to relocate, construct new common studios and offices, upgrade their equipment, and to contribute to the growth of a now vibrant downtown area. The high visibility site, which never would have been chosen but for the existence of the time brokerage agreement, is convenient to communities within the market. A store front studio has also been constructed which looks out on a busy downtown street. It is totally dedicated to producing local public affairs programming.

The ability to bring forward many different "voices" to the viewers in the Cleveland market is attributable to the enhanced competition that derives from the relationship between the two licensees. Furthermore, the operating expense savings that result from the time brokerage agreement have been used to shore up programming as never before. Annexed hereto is a list of Emmy Award winning programs for both WOIO-TV and WUAB-TV. It should be noted that the year designated for the awards is the prior year's competition. In the 1995 awards, reflecting 1994 programming, WUAB-TV garnered a few awards, and WOIO-TV none at all. However, in the years following implementation of the time

brokerage agreement, both stations became recipients of a significant number of Annual Regional Emmy Awards.

Recently, Malrite commissioned National Economic Research Associates (NERA) to, inter alia, provide information regarding the benefits that result from the common programming operation of these local television stations. The analysis showed manifest consumer benefits arising from efficient combinations. The NERA study, which was filed in conjunction with Malrite's Reply Comments in MM Docket Nos. 91-221 and 87-7 is attached.

Finally, it is important to note the continued disadvantage faced by WOIO-TV in the new age of digital television. The Commission's Sixth Report and Order, FCC 97-115, released April 21, 1997, has assigned DTV Channel 10 to WOIO-TV at a power level of 3.5 kw. The station will fall far short of matching its present service area as reflected by the 90% congruence figure included within Appendix B to the Sixth Report and Order. This, by itself, will reduce WOIO-TV's competitive position in the television market and serves as further good cause to continue the time brokerage agreement.

ATTACHMENT 1

Memorandum

To: Tom Griesdorn
From: Vanessa Oubre
Date: June 25, 1997
Subj: HH Share Trend

3 sweep household share trend as requested:

Monday-Sunday
9:00am-12:00 Midnight

<u>STATION</u>	<u>NOV'96</u>	<u>FEB'97</u>	<u>MAY'97</u>
WOIO	9.5	9.9	10.2
WUAB	7.2	6.9	9.9
WEWS	19.1	18.6	18.1
WKYC	16.5	16.3	16.0
WTW	11.5	11.1	11.0
WBNX	3.0	3.2	2.9

ATTACHMENT 2

WOIO and WUAB
Headcount analysis

Department	<u>Actual combined</u>		additions/ deletions
	1994	1997	
Technical			
full-time	23	32	+9
part-time	6	3	-3
Programming			
full-time	11	8	-3
part-time	3	0	-3
Production			
full-time	17	47	+30
part-time	4	7	+3
News			
full-time	40	91	+51
part-time	3	4	+1
Sales			
full-time	37	37	0
part-time	1	0	-1
Promotion			
full-time	10	21	+11
part-time	0	1	+1
G&A			
full-time	15	16	+1
part-time	4	6	+2
Total			
full-time	153	252	+99
part-time	21	21	0

**Economic Benefits to Cleveland
from the Incremental Contributions
of the WOIO-WUAB LMA**

	Incremental Effects	Multiplier	Total Benefit to Cleveland
	(a)	(b)	(c)
			[(a)*(b)]
Employment (Persons)	99	2.3	224
Payroll (\$Million)	\$ 5.5	1.8	\$ 9.7
Output (\$Million)			
a) Regional Earnings	\$ 1.5	0.5	\$ 0.8
b) Regional Output	\$ 1.5	1.8	\$ 2.7

Sources: *Regional Multipliers: A User Handbook for the
Regional Input-Output Modeling System (RIMS II)*,
U.S. Department of Commerce, May 1992.
Information provided by Malrite.

ATTACHMENT 3

28th 1997 Annual Cleveland Emmy Awards

CATEGORY

RECIPIENT

WOIO

Hard News Series:

"TOO DRUNK TO DRIVE" (WOIO/WUAB)

Scott Newell
Kim Fatica

Hard News Report:

"CUSTODIANS CASH IN"

Tom Meyer
Dale Danczak

Photojournalistic Enterprise

Kim Fatica

Outstanding Individual Achievement/News/News Performer:

"DUMPSTER DIVERS"

Tom Meyer

Public Service Announcement (WOIO/WUAB):

"DIGITAL TELEVISION"

Sean McCreary

Community Services (James Armstrong/Holistic Birrer-Sells/

Steve Szilagyi-Cleveland Clinic:

Jill Worrell/
Mark Williams

WUAB

Outstanding Individual Achievement/Technical Director:

"TEN O'CLOCK NEWS"

Andy Black

Hard News Series:

"TOO DRUNK TO DRIVE" (WUAB/WOIO)

Scott Newell
Kim Fatica

Outstanding Individual Achievement/Youth Specials:

"PLANET CLEVELAND" GREAT LAKES SCIENCE
CENTER"

Richard Sullivan
Liz Tippit
Mark Williams

Individual Outside News/Directing:

"INDIANS BASEBALL"

Pat Murray

On-Air Promotion/Station Created:

"TRIBE '96"

Sean McCreary

Public Service Announcement (WUAB/WOIO):

"DIGITAL TELEVISION"

Sean McCreary

27th 1996 Annual Cleveland Emmy Awards

CATEGORY

RECIPIENT

WOIO

Anchor/News

"WORLD SERIES LIVE"

Gretchen Carlson/Dave Barker

News Series/Hard News

"A STRANGER IN THE SCHOOL"

Dave Barker

WOIO/WUAB

Service News Story/Series

"MARITZA'S MIRACLE"

Scott Newell/Jared Manders
Thom Shaefer

Technical Achievement

"FANFARE FOR CLEVELAND"

Jim Stunek/Patrick Murray

Outstanding Individual Achievement in Programming
Outside a Regularly Scheduled Newscast/Directing: Live/
Live on Tape

"FANFARE FOR CLEVELAND"

Patrick Murray

Jun-26-97 12:37P
06/26/97 12:39

WOIO WUAB TO J. CHAFFE

P.06
NO. 196 004

26th 1995 Annual Cleveland Emmy Awards

CATEGORY

RECIPIENT

WOIO

*
No awards received

WUAB

Outstanding Individual Achievement in a Newscast/
Research:

"SILENCE THE VIOLENCE"

Ben Holbert

Editorials:

WUAB EDITORIALS

Gary Short/Rich Hirz

Sports Programs/Live or Live on Tape coverage
of an entire sports event:

CLEVELAND CAVALIERS BASKETBALL

David Dombrowski/Patrick Murray

Community Services:

"SILENCE THE VIOLENCE"

Monica Banks/Ben Holbert
Betty Halliburton
Karin Boesler/Brian Johnson

* For year 1994

ATTACHMENT 4

NATIONAL ECONOMIC
RESEARCH ASSOCIATES

50 MAIN STREET, WHITE PLAINS, NY 10606
TEL: 914 448 4000 FAX: 914 448 4040



To: Bruce A. Eisen, Esq., Kaye Scholer Fierman Hays & Handler, LLP
From: P. Beutel, H. Kitt
Re: Federal Communications Commission, Second Notice of Proposed Rule Making,
MM Docket No. 91-221
Date: March 20, 1997

I. ASSIGNMENT

NERA was retained by counsel to Malrite Communications Group, Inc. ("Malrite") to provide certain economic analyses in connection with the Reply phase of the Federal Communications Commission's ("FCC" or "Commission") *Second Further Notice of Proposed Rule Making* ("Second Notice").¹ Specifically, we were asked to provide an assessment of the economic benefits that can result from allowing common ownership of — or local management agreements ("LMAs") between — local television stations.

We understand that a number of parties have filed comments in connection with the Second Notice. As we understand it, several have argued against the creation of what the FCC defines as "duopolies" (which, of course, differs from its use in economics) or relaxing the current duopoly and LMA regulations. While we have not had the opportunity to review all of these comments, we understand that those filed by Post-Newsweek and the Media Access Project, et al. are two such examples.² In its filed comments, Post-Newsweek alleges, among

¹ *In the Matter of Review of the Commission's Regulations Governing Television Broadcasting, Second Further Notice of Proposed Rule Making*, Federal Communications Commission, FCC 96-438, MM Docket No. 91-221, Adopted November 5, 1996, Released November 7, 1996.

² *Comments of Post-Newsweek Stations, Inc.*, February 7, 1997. *Comments of Media Access Project, et al.*, February 7, 1997.

other things: "Diversity of voices in local markets declines when stations that otherwise would be independently managed are controlled by other stations that likely exist in the very same market. The public interest suffers when there are fewer voices in local markets." (p. 6) Similarly, MAP alleges: "Authorization of local TV duopolies would be a severe blow to the public's right to receive information. There is no indication that the profitability of ... combinations will in any way redound to the benefit of viewers." (p. iii) As we discuss below, we believe these arguments to be incorrect.

II. THE FCC'S COMPETITION AND DIVERSITY OBJECTIVES

The FCC's mandate with respect to broadcast television has been to promote the public interest. Historically, it has pursued this goal by promulgating regulations that are intended to promote both diversity and competition. In pursuing the first, the FCC traditionally has focused on, among other things, outlet diversity, by assuming that an increase or decrease in the number of separately owned outlets would result in a corresponding change in the range of viewpoints transmitted over the airwaves.

With respect to the latter, the Commission's objective is relatively straightforward. Competition, as a general matter, promotes consumer welfare and the efficient use of resources: Consequently, the FCC has a policy of encouraging competition among broadcast television stations and, as well, among competing sellers of (local and national video) advertising time and competing video program producers and distributors.

III. POTENTIAL BENEFITS

Other things equal, consumers benefit from combinations that tend to increase the efficiency of the partners' operations — *e.g.*, through the realization of economies of scale, scope or specialization, or the ability of the combined firm to offer products or services that otherwise would not be made available. The same principles apply to common ownership of — or LMAs between — local television stations: The benefits that can result from such combinations typically fall into three broad, overlapping categories: (1) increased diversity; (2) economic benefits to the community; and (3) realization of economic efficiencies. As we

discuss briefly below, Malrite's LMA with Cannell Cleveland L.P. provides a useful illustration of these benefits.³

Malrite operates WOIO Channel 19, licensed to Shaker Heights, Ohio, the current CBS network affiliate in Cleveland. Cannell Cleveland L.P. owns WUAB Channel 43, licensed to Lorain, Ohio. Under the terms of an LMA between the two stations that took effect in mid-1994, Malrite effectively operates and sells the advertising time for both of these UHF stations. The history of this LMA provides an example of the benefits that accrue both to the parties and to the community from such combinations.

A. Diversity

By combining and sharing the resources of WOIO and WUAB — two relatively weak UHF stations — Malrite was able to assemble an efficient news gathering and reporting operation. Consequently, it successfully introduced news programming that, absent the LMA, the separate stations would not have offered.⁴ Indeed, the combination enabled Malrite — the time broker in the LMA — to assemble, in a cost-efficient manner, an audience of sufficient critical mass, in terms of the breadth and diversity of attributes, that advertisers could view the combined stations as a reasonable alternative to the stronger nationally-owned VHF stations in the marketplace. The ability to sell this type of broader-reach advertising across the two stations generated sufficient revenues to justify Malrite's investment in these news, programming and production operations.

³ NERA performed certain analyses in connection with Malrite's LMA with Cannell regarding the competitive environment in which the stations compete. (See, for example, Howard P. Kitt and Phillip A. Beutel, *An Economic Analysis of the Relevant Advertising Market(s) within Which to Assess the Likely Competitive Effects of the Proposed Time Brokerage Arrangement between WUAB Channel 43 and WOIO Channel 19*, July 15 1994; Sumanth Addanki, Phillip A. Beutel and Howard P. Kitt, *Regulating Television Station Acquisitions: An Economic Assessment of the Duopoly Rule*, May 17, 1995; both cited in the FCC's *Second Notice*, footnote 35.) In the course of that work, we became familiar with the local market and the stations' operations therein.

⁴ For example, WOIO can now produce and air 6am, noon, 6pm and 11pm local newscasts, Monday through Friday, as well as 6pm and 11pm local newscasts on Saturday and 6:30pm and 11pm on Sunday. WUAB, as well, finds it remunerative to continue its 10pm newscast (which, we understand it would not have done absent the LMA).

With these scale economies Malrite also gained the ability to create and broadcast commercially attractive, locally-oriented special programming that otherwise would not have been remunerative on a stand-alone basis.⁵ For example:

- Beginning about May 1996, Malrite has created and broadcast a monthly half-hour educational program, called *Planet Cleveland*, that involves Cleveland-area children visiting places of local interest — *e.g.*, local museums, zoos, businesses and parks. (This contrasts with the largely syndicated, *i.e.*, non-local, children's fare offered by other stations in Cleveland and elsewhere.)
- From about July 1995, and at least several times a year since then, WOIO-WUAB has been able to produce half-hour or one-hour local-interest specials. These programs have covered a variety of topics, including the July 4th fireworks coverage, the Cleveland Indians' pennant winning season, local election coverage and medical issues involving children.

This additional local-interest programming clearly represents a genuine increase in program diversity for Cleveland consumers. To be sure, the FCC has traditionally held the notion that more separately owned stations leads to more diversity. As we noted in an earlier paper,⁶ the FCC's view could well be wrong. Specifically:

"Consider a monopolist that owns all of the channels in a given area. It could well maximize profits by offering a broad range of programming, thus appealing to every audience niche. Here, greater concentration of ownership may actually promote diversity.⁷ In contrast, consider areas in which there are a relatively large number of competing stations: each might maximize its profits by

⁵ According to Malrite, without the LMA few, if any of the specials noted, would have been produced. (Malrite Reply Comments, ¶ 9.)

⁶ See, "Regulating Television Stations Acquisitions: An Economic Assessment of the Duopoly Rule," Sumanth Addanki, Phillip A. Beutel and Howard P. Kitt, May 25, 1995, filed on behalf of the Local Station Ownership Coalition at Tab K, pp. 20-21.

⁷ The Commission recognizes this alternative school of thought. (See, FNPRM, p. 28.)